

Statement of the Issues

1. May a circuit court refuse to certify an otherwise proper and meritorious class action because of a statute of limitations defense, utterly speculative potential conflicts of interest, and unspecified concerns about a need for “numerous hearings”?

The circuit court refused to certify the class. The most relevant authorities are SDCL 15-6-23, *Kleiner v. First National Bank*, 97 F.R.D. 683 (N. D. Ga. 1983), *In re: South Dakota Microsoft Antitrust Litigation*, 2003 S.D. 19, 657 N.W.2d 668, *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997), *In re Energy Systems Equipment Leasing Sec. Litigation*, 642 F. Supp. 718 (E.D.N.Y. 1986), and *Newberg on Class Actions* (4th ed. 2002).

2. Alternatively, if a circuit court refuses to certify part of a class action for the foregoing reasons, may it—for no reason whatsoever—refuse to certify the remaining part, to which these concerns do not apply?

The circuit court refused to certify even the part of this class action to which its statute of limitations concerns did not apply. The most relevant authorities are SDCL 15-6-23(c)(4), *Beck v. City of Rapid City*, 2002 S.D. 104, 650 N.W.2d 520, *Freeman v. Truitt*, 119 So. 2d 765 (Miss. 1960), and *Phoenix Acquisition Corporation v. Campcore, Inc.*, 612 N.E.2d 1219 (N.Y. 1993).